

Judge Lynch ordered Triano to show cause why his petition should not be dismissed as time barred and procedurally defaulted. In response, Triano filed a brief arguing he suffered from ineffective assistance of counsel. Judge Lynch found no extraordinary circumstances prevented him from complying with the statute of limitations and his failure to first present his claims to the Montana Supreme Court was unexcused. Accordingly, Judge Lynch recommended the petition be dismissed with prejudice.

Petitioner Triano did not timely object and so has waived his right to de novo review of the record.¹ 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I


¹On June 15, 2011, Triano did file notice that he is appealing Judge Lynch’s Findings and Recommendation to a higher court. Judge Lynch’s Recommendation cannot be directly appealed to the Court of Appeals. To the extent Triano meant to object to Judge Lynch’s Findings and Recommendation, his “notice” provides no detail or explanation as to the contours of his objection. A party objecting to the findings or recommendations of a magistrate judge must identify the parts of the magistrate’s disposition that the party finds objectionable and present argument and supporting authority, such that the district court is able to identify the issues and the reasons supporting a contrary result. It is insufficient for the objecting party to merely state that he objects. See Hagberg v. Astrue, 2009 WL 3386595 at *1 (D. Mont. 2009) (“There is no benefit if the district court[] is required to review the entire matter de novo because the objecting party merely [states that he objects].”). Accordingly, the Court does not construe Triano’s notice of appeal as an objection meriting de novo review.

can find no clear error with Judge Lynch's recommendation (dkt #5) and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that the Petition (dkt #1) is DISMISSED WITH PREJUDICE. The Clerk of Court is directed to enter by separate document a judgment in favor of Respondent and against Petitioner.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.²

Dated this 29th day of June, 2011.



Donald W. Molloy, District Judge
United States District Court

²Petitioner Triano's Notice of Appeal filed on June 15, 2011, does not suffice to appeal this Order and the entry of judgment to the Ninth Circuit Court of Appeals. If Triano intends to appeal, he must file a subsequent and timely notice of appeal.